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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re MAX R., et al., Persons Coming
Under the Juvenile Court Law.

B176521

(Super. Ct. No. CK48125)

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

MARIA R.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Valerie Skeba, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Karen B. Stalter, under appointment by the Court of Appeal, for Defendant and Appellant.

Larry Cory, Assistant County Counsel, and Jacklyn K. Louie, Deputy County Counsel, for Plaintiff and Respondent.

A mother appeals from a dependency court order terminating her parental rights, claiming there was insufficient evidence that her two young sons were adoptable. We reject her claim of error and affirm.

FACTS

Around midnight on March 30, 2002, the police responded to a call that young children were alone in a car parked in an alley and found two children alone and asleep in an unlocked car with a rear window partially open. It was about 55 degrees outside, and the two boys, Max R. (now age 6) and Gary R. (now age 4), were barefoot and disheveled. Gary wore only a diaper and tee shirt. The car engine was cold to the touch, and there was an open can of beer on the passenger side front floorboard. Officers waited at the car for about 20 minutes, until they were directed to the mother, Maria R., who was inside a nearby bar.

Maria, slightly intoxicated, told the officers she had been in the bar for five minutes, and just to pick up some pre-ordered food. The bar staff knew nothing about a food order, and told the police she had been in the bar at least 40 minutes and had left the children alone in the car for lengthy periods on prior occasions. The children were taken into protective custody, and Maria was arrested for child endangerment. In April, the Department of Children and Family Services filed a petition (Welf. & Inst. Code, § 300, subd. (b)), and the court ordered the children detained and placed together in foster care, with

low or no cost referrals for Maria.¹ The children were placed with Arturo and Judy R.

In May, the Department reported that Maria consistently claimed she had not neglected her children and informed the court that Maria's boyfriend, Eddy E., had a criminal history that included a bench warrant for failure to appear on a spousal abuse charge. In May, pursuant to Maria's jurisdictional waiver and mediation agreement, the court sustained the petition as amended, and ordered monitored visits and family reunification services for Maria, including parenting education and substance abuse counseling.²

In July, the Department reported that Maria was living in motels and hotels. While she claimed to be enrolled in the court-ordered programs, program staff reported otherwise. Maria's visits were "semi-regular," and she frequently canceled and attempted to change dates and times at the last minute. In August, the Department reported that Max and Gary were learning English and were emotionally healthy, happy, and adjusting well to Judy R. and her family. Maria's visits remained inconsistent.

By December, Max and Gary were well adjusted to their home, were bilingual, and were clearly loved by the foster family. Max had entered the Head Start program and, according to his teacher, could count to 10, knew shapes and colors, and was sociable, intelligent, and willing to learn. Gary was

¹ Undesignated section references are to the Welfare and Institutions Code.

² The fathers of Max and Gary were deemed "alleged" fathers and, because their whereabouts were unknown (one was reportedly living in Honduras and the other in Guatemala), the court declined to offer them reunification services.

learning to feed himself, had good table manners, and normal verbal skills. Both boys liked music and dancing, which they learned from the foster parents' daughter. Maria's visits remained inconsistent, and her relationship with Eddy reportedly "consume[d] her time." Both a social worker and a counselor noticed bruising on Maria -- under an arm and on her face. In November, Maria was discharged from a substance abuse program for absenteeism. In December, at Maria's request, the court set a contested hearing. (§ 366.21, subd. (f).)

In January 2003, the Department reported a strong attachment between the children and the foster family. Maria's visits remained inconsistent, but she was readmitted to her drug program on condition she attend consistently, and her drug tests were clean. The court found the Department had made reasonable efforts to enable the children's return to Maria and that Maria had only partially complied with the case plan. The court continued reunification services, set a March hearing date to consider visitation, and a new date for the contested section 366.21, subdivision (f), hearing.

As of March, the children were continuing to develop well. Max was "active, sweet and easy to socialize with," and comforting to his brother. Gary was potty-trained, coordinated, walking well, beginning to talk in sentences, played well alone, and was affectionate with his foster family and described as "shy, sweet and happy." But during visits with Maria, he was withdrawn and preferred to be close to Judy. Maria failed to show for half of her visits. She claimed she was no longer involved with Eddy, but she continued to work at his nightclub. She minimized the need to comply with court-ordered programs to regain custody of her children (stating that her mother, who was caring for Maria's three daughters in Honduras, would retain a "high profile lawyer" to win

custody), and was terminated again from the drug program for lack of attendance. On March 5, the court ordered continued visitation and transportation funds, attendance at "A.A." three times a week and drug testing, and Spanish-speaking referrals.

In June and July, the Department reported the children's continued positive development. Gary was in the Head Start program, and Max was in kindergarten, making friends easily and interacting appropriately with adults and peers. Although the R.'s adored the children, they decided they could not pursue adoption due to Arturo R.'s medical issues. A Department assessment nevertheless indicated the boys were "likely to be adopted." Maria, meanwhile, still had no consistent address and was observed twice in May with a black eye. She was "facing termination" from her drug program, again for absenteeism, and twice tested positive for cocaine, and she missed several tests. Between March and June, Maria visited more consistently, and the children seemed to enjoy the visits.

Following the contested hearing in July, the court terminated reunification services and set a section 366.26 hearing, but permitted Maria's visits to continue. The Department was ordered to actively search for an adoptive home.

In an October report, the Department informed the court that Max and Gary were still happy and well cared for in their foster home. According to Max's kindergarten teacher, he was having a hard time sharing, following rules, and interacting with his peers, and became easily frustrated. He was referred for counseling, and his counselor recommended that Gary be included and

that the R.'s needed parenting and disciplining skills. Max was psychologically evaluated, and it was determined that he had symptoms of attention deficit hyperactive disorder.

Maria, meanwhile, gave the Department a new address. A social worker spoke with a woman there who said she had asked Maria to move out a month earlier because she constantly came home drunk and fought with Eddy. Maria had instructed this woman to lie to the Department for her and say she lived there, but the woman, who had known and worked with Maria at the nightclub, said she would not lie because she had observed the children being neglected before their detention. She also reported that Maria had been fired from the nightclub in August 2003 for fighting with patrons, and that the only day Maria was not drunk was Tuesday because that was the day of her visits with the children. Maria maintained she had an attorney who told her not to worry because she could still "fight" for her children even if they were adopted. She wanted to move them to Honduras.

As of December, the boys were still living with the R.'s, but adoptive parents had been identified (Charles and Gloria F.) and they had an approved home study and briefly met the boys. Visits were scheduled to begin with the adoptive parents on December 13. The boys were in therapy, and Max's excessive frustration, temper tantrums, and crying evident at the beginning of the year were diminishing as he learned alternative behaviors (such as raising his hand for help). The boys' health was good, and they were described as "young and adoptable."

In January 2004, the Department reported progress by Max in kindergarten, and by both boys in therapy. While there were some problems with discipline, their therapist identified poor parenting as the major cause. By the time of the section 366.26 hearing on January 27, Max and Gary had had a day and an overnight visit with the adoptive parents, and two additional overnights were planned. The adoptive parents were anxious to proceed with adoption, and called the boys a "joy." The likelihood of adoption was considered "high." The court continued the hearing.

On February 21, Max and Gary were placed with the adoptive parents. In late April, the Department reported the boys were happy when taken to their new home, and had gone directly to their new room and set up their toys. They were comfortable, called their adoptive mother "mama," and said they wanted to live with their adoptive parents. At the continued hearing, the boys' lawyer said she had talked to Max who said he was content where he was. He understood Maria was his mother, but he called her "Maria" and did not view her as a parental figure. Maria had been visiting inconsistently since January (and could no longer communicate well with Max because she spoke only Spanish), but the court granted her request for a contested hearing (based on the visitation exception) and continued the matter to May. (§ 366.26, subd. (c)(1)(A).)

In May, the Department reported that the boys were happy, loved and cared for in their new home. They were learning to swim and had gone to the beach for the first time, and Max had gone camping and was on a soccer team. Gary was enrolled in preschool. The social worker said it would be detrimental to remove the children from their adoptive home.

At the contested hearing, the court received in evidence the recent reports, and Maria made a statement in which she asked the court to return the boys to her because she missed them and they missed her and wanted to be with her; she said she had been complying with all of her programs, was testing clean, and had an apartment ready for the boys. The court found Maria was not a parental figure, and said it had to act in the boys' best interest, which was to keep them in the loving and stable home of the people who were acting as parental figures. The court found by clear and convincing evidence that the children would be adopted and terminated Maria's parental rights. Maria appeals.

DISCUSSION

Maria contends the order terminating her parental rights must be reversed because there was insufficient evidence that Max and Gary are adoptable. (§ 366.26, subd. (c)(1).) We disagree.

Despite Maria's reference to the boys' "emerging behavioral problems," the foster parents' withdrawal of their request to adopt the boys, and the relative brevity of the boys' time with the identified adoptive parents, there plainly was substantial evidence that the boys were likely to be adopted within a reasonable period of time. (§ 366.26, subd. (c)(1); *In re Erik P.* (2002) 104 Cal.App.4th 395, 399-400; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) Both boys are young, in good physical, emotional and developmental health, and both have consistently been described as sweet, affectionate, sociable, and intelligent children. (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649.)

Both boys have responded to therapy, and their transition into their new home has been comfortable. Contrary to Maria's suggestion, there was nothing about the boys or their behavior that caused the foster parents to decide not to adopt -- the decision was due to the foster father's medical condition. The relationship between the foster parents and the boys was always described as loving, and the foster parents remained willing to care for the boys indefinitely so long as there was no legal obligation. Moreover, an adoptive home has not only been identified, but the boys have now spent nearly a year with their adoptive parents without complaint from anyone -- instead, there are unanimous expressions of commitment, excitement, joy, and compatibility. (*In re Amelia S.* (1991) 229 Cal.App.3d 1060, 1065.)

DISPOSITION

The order is affirmed.

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VOGEL, J.

We concur:

MALLANO, Acting P.J.

SUZUKAWA, J.*

*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.